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Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Australia

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, on her visit to Australia from 13 to 27 February 2017. In the report, she examines gaps and challenges in fulfilling the obligations of the State to eliminate violence against women, its causes and consequences, and recommends measures for preventing and combating violence against women in the country.

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Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Australia*

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* Circulated in the language of submission only.

I. Introduction

1. At the invitation of the Government, the Special Rapporteur on violence against women, its causes and consequences visited Australia from 13 to 27 February 2017.

2. During her visit, the Special Rapporteur met with key stakeholders on the situation of violence against women at the federal, state and self-governing territory level.

3. She visited five out of the six state governments (New South Wales, Victoria, Queensland, South Australia and Tasmania) and the two self-governing territory governments — the Australian Capital Territory and the Northern Territory.

4. She also met with a broad range of civil society representatives and service providers, the Australian Human Rights Commission and various rights commissioners at the national, state and territory levels. She held two meetings with academics in Sydney and Melbourne.

5. She visited the Brisbane Women's Correctional Centre and a number of women's legal centres, some of them specialized in indigenous issues, and shelters.

6. The Special Rapporteur expresses her gratitude to the federal Government, and the governments of the states and territories for their excellent cooperation, dedication and openness and to the Australian National Human Rights Commission, civil society organizations, academics and other stakeholders for their valuable input in facilitating her visit. She expresses her heartfelt thanks to all the victims of violence who agreed to relate their personal experiences, crucial to gaining a deeper understanding of the situation of violence against women in the country.

7. She was deeply impressed by the personal commitment and dedication of many victims who have experienced family or domestic violence and have become tireless advocates for the measures needed to address violence against women and on the importance of integrating victims' voices into all laws, policies and programmes, and by the efforts of the Government to do so. The Special Rapporteur would like to recognize this as a promising practice.

II. General context

8. Attention to the issue of domestic violence and family violence,[1] publicly recognized as a pandemic, has increased recently and has translated into a strong political will expressed at the highest level of the leadership of the country and transcending political divides. Domestic and family violence are now publicly expressed issues of national priority for federal, state and territory governments while other forms of violence against women, such as assault, sexual harassment, violence in residential settings and online violence and harassment, do not enjoy the same high level of attention and response.

9. As recognized by the Council of Australian Governments, based on available data violence against women is disturbingly common and continues to have a significant, negative impact on women, children and the wider community. The scourge of violence by an intimate partner takes on average the life of one woman every week throughout the country. Women represent 79 per cent of intimate partner homicides; one in three women has experienced physical violence since the age of 15; and almost one in five women has experienced sexual violence since the age of 15.

10. Since the age of 15, one in four women (23 per cent) has experienced violence by an intimate partner, one in four women (23 per cent) has experienced emotional abuse by an intimate partner and one in six women (16 per cent) has experienced physical or sexual

[1] The Rapporteur notes the use of the term "domestic violence" and "family violence", with the former being used under state and territory domestic violence laws and the latter the terminology used under the Family Law Act. They are generally used interchangeably across the relevant states and territories.

violence by an intimate partner. More than half a million women report that their children have seen or heard partner violence. The social, health and economic consequences of family, domestic and sexual violence are enormous, with costs to the economy estimated at $22 billion in 2015–2016.[2] However, the true scale of the problem is probably much greater, as there is no comprehensive national collection of comparable data on different forms of violence against women and it is estimated that many instances of violence go unreported.

11. Violence against Aboriginal and Torres Strait Islander (indigenous peoples) women and girls has been disproportionately high and is clearly revealed by the collection of data on such violence. Indigenous peoples represent 2.8 per cent of the total population, yet indigenous women and girls are 32 times more likely to be hospitalized as a result of family violence. They experience greater intersectional discrimination that emanates from colonization and the dispossession and discrimination to which indigenous peoples have been subjected for more than two centuries, and which has resulted in their exclusion and disadvantaged position. Ten years after the apology to the "stolen generations", indigenous women and girls continue to carry intergenerational trauma, as a result not only of the past but also of some remaining laws and policies that keep them in a disadvantaged socioeconomic position, including higher rates of child removals.

III. Incorporation of the international framework on violence against women

12. Australia is party to seven of the core human rights treaties. It made two reservations to the Convention on the Elimination of All Forms of Discrimination against Women, in relation to article 11 (2) on maternity leave with pay and a general reservation relating to the exclusion of women from combat duties. The Special Rapporteur was informed that withdrawal of both reservations was being considered.[3]

13. Australia is a democratic nation without comprehensive constitutional or legislative protection of basic human rights at the federal level. Also, under the Australian dualist approach, treaties must be incorporated into domestic law at either the federal or state/territory level. Whether a particular treaty requires incorporation into federal or state/territory law will depend on the division of competencies in the federated system.

14. The federal structure and division of competencies results in different laws and policies on violence against women applying in each State or territory. Some jurisdictions include psychological abuse as a form of domestic violence, others do not. Some jurisdictions include economic abuse as a form of domestic violence, others do not. The legislation of some, but not all, jurisdictions expressly provides that stalking constitutes domestic violence.

15. There is no single nationally agreed definition of family and domestic violence and this results in a lack of harmonized protection of a woman's right to life free from violence across all jurisdictions, in line with the Convention on the Elimination of All Forms of Discrimination against Women.

16. The federal Parliament has passed some important legislation that protects women's human rights, including the Sex Discrimination Act 1984 (Cth) which was amended in 2011 to encompass different areas aimed at the achievement of gender equality. The states and territories have also passed anti-discrimination legislation and other laws, and all have anti-discrimination bodies or human rights commissions but overall, the Convention is only partially incorporated and implemented.

[2] See Department of Social Services, "The cost of violence against women and their children in Australia" (May 2016).

[3] The Joint Standing Committee on Treaties of the federal Parliament strongly supported the move to withdraw the reservation relating to combat duty. See http://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024073/toc_pdf/Report171.pdf;fileType=application%2Fpdf.

IV. State responses and measures to address violence against women

A. Constitutional, legislative and policy framework

1. Constitutional framework

17. Australia is a federal system with a division of responsibilities between the federal, state and territory governments in the area of violence against women. That division of competencies results in various laws and policies and various levels of prevention and protection of women and girls from violence, and presents particular challenges in assessing the implementation throughout its territory of the State's obligations under international human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women, in relation to violence against women. The Special Rapporteur recalls general recommendation No. 28 (2010) on the core obligation of States parties under article 2 of the Convention, in which the Committee on the Elimination of Discrimination against Women reiterates that the delegation of government powers "does not negate the direct responsibility of the State party's national or federal Government to fulfil its obligations to all women within its jurisdiction".

18. Additionally, the Constitution does not enshrine the general right to equality of women and men, as required under article 2 of the Convention, nor is there a general prohibition of discrimination against women, as defined in article 1, that could provide a consistent standard for harmonizing laws related to women's rights and the prevention of gender-based violence against women. However, the objects clause (para. 3 (d)) of the Sex Discrimination Act 1984 (Cth) provides that an object of the act is "to promote recognition within the community of the principle of the equality of men and women". Additionally, the act prohibits unlawful discrimination against women on the ground of their sex (and on grounds of gender identity, marital or relationship status, pregnancy or potential pregnancy, breastfeeding and family responsibilities) and discrimination involving sexual harassment.

2. Most relevant legislation on violence against women

19. The Sex and Age Discrimination Legislation Amendment Act 2011 (Cth) amended the Sex Discrimination Act 1984 (Cth) in an attempt to advance gender equality. The amendment provided that protection from sex discrimination applied equally to women and men; prohibited direct discrimination against male and female employees on the ground of family responsibilities in all areas of employment; strengthened protection against sexual harassment in workplaces and schools and through new technologies; established breastfeeding as a separate ground of discrimination and provided for measures to protect and accommodate the needs of breastfeeding mothers.[4]

20. The Family Law Act 1975 (Cth) was amended by the Legislation Amendment (Family Violence and Other Measures) Act 2011 (Cth),[5] which aimed to protect children and families at risk of violence or abuse. The Special Rapporteur takes note of the first comprehensive review of the family law system, including the Commonwealth Family Law Act 1975, by the Australian Law Reform Commission to address, inter alia, family violence and child abuse (arts. 2, 3, 7 and 26).

21. Some States are at the forefront of reforms at the legislative, policy and institutional levels. A prime example is the Government of Queensland with a task force led by the former Governor-General, which made 140 recommendations for tackling domestic violence in its report *Not Now, Not Ever: Putting an End to Domestic Violence in*

[4] See www.humanrights.gov.au/our-work/sex-discrimination/publications/getting-know-sex-discrimination-act-guide-young-women-2002.

[5] Parliament of Australia, Family Law Legislation Amendment Bill 2011, available from http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4562%22.

Queensland.[6] Another example is the Government of Victoria, which set up a Royal Commission into family violence that enquired into how the response of the state to family violence could be improved by providing 227 practical recommendations for stopping it.

22. There is a need to harmonize cross-jurisdictional coherence in view of the lack of direct applicability and of full incorporation of the Convention on the Elimination of All Forms of Discrimination against Women, the lack of a national legal framework on violence against women and the complex federal system, in which domestic violence laws and intervention orders fall under the authority of the states and territories.

3. National Action Plan

23. The Special Rapporteur welcomes the National Action Plan to reduce violence against women and their children for the period 2010–2022 and its third three-year action plan for the period 2016–2019. The Department of Social Services leads on the implementation of the plan, although efforts to eliminate violence against women and children involve efforts undertaken across several government departments and include actions agreed by the state and territory governments.

24. Under the plan, an independent organization, Our Watch, was established for implementing a shared framework for the primary prevention of violence ("Change the story") to drive nationwide changes in the culture, behaviours and attitudes that underpin and create violence against women and children.

25. The Special Rapporteur notes that, while the plan supports strengthening independent monitoring and evaluation, it lacks a holistic approach to violence against women, since it insufficiently addresses the need for adequate crisis services, shelters or safe houses for women and children who are victims of violence, and opportunities for empowerment in such places. The plan also insufficiently addresses specific situations and patterns of systematic violence against indigenous women and girls in the context of domestic violence. Furthermore, it fails to mention violence against women in prison and violence perpetrated against asylum seekers within the immigration and offshore detention system.

26. The Special Rapporteur commends the support from the Commonwealth and all state and territory governments of Australia for Australia's National Research Organisation for Women's Safety and the new ways of integrating services through front-line service initiatives, including DV-Alert and 1800RESPECT.

27. The Special Rapporteur welcomes the work undertaken at the federal level on the impact of the use of technology on women and children. The Office of the eSafety Commissioner has expanded its responsibilities to tackle the issue of online violence, including online abuse and revenge porn, which are on the rise. The Special Rapporteur was informed of proposals that would introduce new telecommunications offences, such as revenge porn, into the criminal law, falling within the jurisdiction of the federal Government (as an amendment to the Criminal Code Act of 1995). She notes with appreciation such developments, as well as other initiatives spearheaded by the federal Government on proposed civil penalties, which could act as an alternative for victims who find pursuing criminal action too distressing and too slow.

B. Institutional framework: national machinery and independent institutions

28. In the absence of a uniform national law on violence against women, the Council of Australian Governments and its advisory panel on reducing violence against women and their children play a pivotal role in ensuring consistency across jurisdictions and information-sharing. In 2013, the Council decided that it was a national priority to identify

[6] Available from www.communities.qld.gov.au/gateway/end-domestic-family-violence/about/not-now-not-ever-report.

and implement best practices and to share information. The "Stop it at the start" campaign and the national summit held in Brisbane in 2016 brought together practitioners, academics, survivors, business and civil society actors.

29. The Office for Women, located in the Department of the Prime Minister and Cabinet coordinates policy and programmes across Australia. The Special Rapporteur notes that it does not have implementation responsibilities and has only 30 staff.

30. The Australian Human Rights Commission has made ensuring freedom from violence, harassment and bullying by promoting human rights safeguards one of its three priority areas. Twenty per cent of the total number of complaints handled by the Commission are primarily related to the sexual harassment of women in employment. The Special Rapporteur notes in particular the work carried out by the current and former Sex Discrimination Commissioners, including the Gender Equality Blueprint 2010, in which a number of recommendations that are still valid were made, including in relation to violence against women;[7] the report on the results of the national survey on sexual harassment and sexual assault at university; the fourth sexual harassment prevalence survey carried out by the Commission; and the continuation of its collaborative project on cultural reform with the Australian Defence Force. Despite such important work, the Special Rapporteur was informed that the budget of the Commission has been declining over the past 10 years, but in particular in the previous 3 years. She notes with concern ideological attacks, including personal attacks against the former President, intended to undermine the credibility and funding of the institution.

V. Manifestations of violence against women, its causes and consequences

31. As acknowledged by the Government, data relating to violence against women and their children is generally inconsistent, owing to differences in what is captured, counted and reported across states and territories (see CEDAW/C/AUS/8 para. 14.16). However, the Special Rapporteur welcomes the commitment toward developing a national data collection and reporting framework for domestic and family violence and sexual assault, which will improve the information available to support research, policy development, operational decision-making, education and community awareness activities into the future (ibid., para. 14.17). Currently, in the absence of an overall national reporting system, a lot of data is collected at the state level, other data such as health data and homelessness data is collected at the federal level.

A. Femicides or gender-related killings of women

32. According to the Australian Human Rights Commission, in 2016 more than 70 women were killed in domestic and family violence-related homicides.[8] The federal Office for Women reported that 75 were killed in 2015, but that probably the actual figure was higher.

33. Some jurisdictions have homicide death review panels, which are interdisciplinary and chaired by the coroner. In the jurisdictions where they exist, death review teams are a positive model, partially in line with the Special Rapporteur's initiative to call on all States to establish a femicide watch and to collect and publish such data and analyse each case in order to determine any shortcomings of the national preventive system.[9]

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[7] Available at www.humanrights.gov.au/sites/default/files/document/publication/Gender_Equality_Blueprint.pdf.

[8] See www.humanrights.gov.au/news/stories/national-system-domestic-and-family-violence-death-review.

[9] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16796& and more recently www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22510&LangID=E.

34. The work done by some non-governmental organizations (NGOs) on quantifying gender-related killings of women, such as the "Counting dead women" project set up by Destroy the Joint and the work of the Deaths in Custody Watch Committee, are also examples of good practice.

35. A report by the Australian Human Rights Commission identifies the steps needed to expand domestic and family death review mechanisms to all jurisdictions and ensure that recommendations made to federal government agencies in death review processes are actioned.[10] The Special Rapporteur notes that this work is being funded under the third three-year action plan of the National Action Plan to reduce violence against women and their children, relating to the period 2016–2019. The Special Rapporteur welcomes the decision to entrust the Commission with the task of engaging with governments and coroners across Australia to identify mechanisms for collecting national data and ensuring that death review processes exist in all states and territories. She recommends that the work be expanded to include to femicide review panels, as recommended in her thematic report on this topic (A/71/398).

B. Domestic violence

36. Domestic violence and family violence are common and widespread. The most recent personal safety survey by the Australian Bureau of Statistics indicates that approximately one in four women have experienced violence by an intimate partner, since the age of 15.[11] The survey further showed that 17 per cent of females from the age of 15 years onwards (1.6 million) were almost three times more likely to experience violence by a current and/or previous partner they lived with than males (6.1 per cent and 547,600). Those figures need however to be considered with caution: while it is difficult to estimate the rate of reporting, it is commonly admitted that the reporting rate of "private" violence perpetrated against women by men is low, making it difficult to measure the true extent of the problem. The Committee against Torture was concerned at information it received that over 50 per cent of the cases of violence against women were not reported (see CAT/C/AUS/CO/4-5, para. 9).

37. Sexual violence within intimate partner relationships is still largely a hidden problem, with low levels of reporting, even where a victim or survivor discloses other forms of abuse. A report by the Sexual Assault Support Service points out that where intimate partner sexual abuse is reported, it is less likely to result in prosecutions and convictions than assault by a stranger. As a result, the different risks and needs of sexual violence survivors go unrecognized and are often overlooked or disregarded.

C. Sexual violence, including harassment in the workplace and at universities

38. The Special Rapporteur was made aware that despite the increasing attention paid to violence against women, sexual violence, both within and outside the context of domestic and family violence, has become less visible within the violence against women agenda and related developments in policy and practice. While the third action plan of the National Action Plan to reduce violence against women and their children attempts to reverse this marginalization, public debate and policy discussions continue to routinely address

[10] "A national system for domestic and family violence death review" (December 2016), available from www.humanrights.gov.au/our-work/family-and-domestic-violence/publications/national-system-domestic-and-family-violence.

[11] See www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4906.0~2016~Main%20Features~Key%20Findings~1. Violence is defined as any incident involving the occurrence, attempt or threat of either physical or sexual assault experienced by a person since the age of 15. An intimate partner can be a current partner, previous partner, boyfriend/girlfriend/date or ex-boyfriend/girlfriend.

"domestic violence" as synonymous with "violence against women", marginalizing sexual violence as well as other forms and settings.[12]

39. At the request of 39 universities, triggered by requests from students, advocates and survivors, the Australian Human Rights Commission conducted a national, independent survey of university students to gain greater insight into the nature, prevalence and reporting of sexual assault and sexual harassment at universities. The report revealed that 1 in 10 female university students had been sexually assaulted in the previous two years and only 4 per cent of students believed that their universities were doing enough to provide sexual assault support.[13] The reporting rate of sexually assaulted students was only 9 per cent, which shows a consistent institutional failure. The authors of the report identified a dire need for sexual assault policies in universities and recommended the establishment of specialist sexual assault services for students and the creation of an independent, "expert-led" review of the high rate of sexual assault at residential colleges. It was reported to the Special Rapporteur that in cases of sexual assault, most universities did not take any action until criminal proceedings against the alleged perpetrator had been concluded and that it took on average two years for a case to reach court, during which time many women would have dropped out because of the fear of having to see the perpetrators on campus.

D. Situation of women who encounter multiple and intersecting forms of discrimination and violence

40. During her visit, the Special Rapporteur paid special attention to the situation of women and girls who encounter multiple and intersecting forms of discrimination and violence and experience higher rates of all forms of violence against women.

1. Violence against Aboriginal and Torres Strait Islander women and girls

41. Indigenous women experiencing family violence are one of the most marginalized and disadvantaged groups in society. The causes of overrepresentation of indigenous women in rates of family violence are complex and intersectional, as they face multiple and intersecting forms of discrimination on the grounds of gender and race. In addition to sexism and racism, indigenous women also face class-based discrimination, owing to their low socioeconomic status, and social exclusion in regional or remote geographical locations. Those forms of discrimination and exclusion create extremely difficult social conditions and manifest themselves in an alarmingly high prevalence of violence against indigenous women, who continue to experience higher rates of domestic/family violence and more severe forms of such violence as compared to other women.

42. In comparison with non-indigenous women, indigenous women are up to 35 times more likely to experience domestic and family violence,[14] 32 times more likely to be hospitalized as a result of domestic/family violence,[15] up to 3.4 times more likely to be victims of sexual violence and 10 times more likely to be killed as a result of violent assault.[16] Their children are 5 times more likely to be hospitalized for the same reasons and they are 7 times more likely to suffer from child abuse or neglect. Indigenous women are 5

[12] See Australian Women Against Violence Alliance, submission to the Special Rapporteur in preparation for her mission to Australia, available from https://awava.org.au/2017/02/13/submissions/submission-special-rapporteur-violence-women-causes-consequences-27-january-2017.

[13] See *Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities* (2017), available at www.humanrights.gov.au/sites/default/files/document/publication/AHRC_2017_ChangeTheCourse_UniversityReport.pdf.

[14] See national plan to reduce violence against women, available from www.dss.gov.au/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022.

[15] See Productivity Commission, *Overcoming Indigenous Disadvantage – Key Indicators 2014*, ch. 4, table 4A.11.22.

[16] See Australian Institute of Health and Welfare, *Family Violence among Aboriginal and Torres Strait Islander People* (2006), p. 66.

times more likely to be victims of femicide than non-indigenous women, their death rate is 8–9 times higher and they are 13 times more likely to be in prison.

43. Underreporting of violence against women is much higher in indigenous communities. Studies indicate that approximately 90 per cent of violence is not disclosed or reported by indigenous women.[17] That is due in large part to a profound mistrust of the justice system, influenced by the impact of colonization and historic forms of State oppression, together with current forms of systemic discrimination that drive ongoing fear of police and of child removal by the State, as discussed further below. Such silencing of indigenous women's voices through the dual experiences of racial and gender discrimination contributes to the disproportionate impact of family violence.

44. A multitude of socio-legal issues increase the vulnerability of indigenous women to violence and exacerbate the effects. Family violence is, as for non-indigenous women, a leading contributor to homelessness, poverty, criminalization, incarceration, mental and physical ill health, drug and alcohol abuse, and the removal of indigenous children.[18] The Special Rapporteur notes that the intrinsic link between family violence, child removal and child protection interventions acts as a significant deterrent for indigenous victims/survivors to disclose family violence and seek assistance from the support services that are available. In 2016–2017, Aboriginal children were around 7 times more likely than non-indigenous children to be in contact with the child protection system[19] and 10 times more likely to be in out-of-home care,[20] a number that is alarmingly on the rise (see A/HRC/36/46/Add.2, para. 88).

45. The Special Rapporteur was distressed to hear stories of indigenous mothers who told her of the perpetuation of negative stereotypes of them, showing a lack of understanding by practitioners of the underlying causes leading to the removal of their children. She notes that the 54 recommendations set out in the landmark report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, *Bringing Them Home*, to redress the impacts of the removal policies and ongoing trauma, have only been partially implemented and remain valid today.[21] The failure to comply with the Aboriginal and Torres Strait Islander Child placement principle is a major concern.

46. The Special Rapporteur agrees with the National Family Violence Prevention Legal Services forum when it reports an excessive and inappropriately punitive and judgmental approach towards Aboriginal victims/survivors of family violence that blames victims for exposing their children to violence, rather than supporting them to safely care for their children and live free from violence. Across Australia, indigenous children now account for almost 35 per cent of all children in care, despite comprising only 4.4 per cent of the child population. On that trajectory, those rates are predicted to triple by 2035. Child removal in itself constitutes a form of violence against women.

47. Strategies such as the "Close the Gap" campaign, aimed at reducing disadvantage among indigenous peoples, are not yet significantly closing the gap with respect to the targets envisaged and certainly not the gap related to gender equality and violence against women within indigenous communities. After a decade, Australia is on track to meet only three of the seven closing the gap targets. The Special Rapporteur notes the new

[17] See Productivity Commission, *Overcoming Indigenous Disadvantage*, p. 4.91.

[18] See National Family Violence Prevention Legal Services, submission to the Special Rapporteur on the rights of indigenous people (March 2017), available at www.nationalfvpls.org/images/files/National_FVPLS_Submission_to_the_Special_Rapporteur_on_the_Rights_of_Indigenous_Peoples_-_Final_version_23032017.pdf, p. 4.

[19] See Australian Institute of Health and Welfare, *Child Protection Australia 2015–2016*, summary, available from www.aihw.gov.au/reports/child-protection/child-protection-australia-2015-16/contents/table-of-contents.

[20] See Australian Institute of Family Studies, "Child protection and Aboriginal and Torres Strait Islander children" (August 2017), available from https://aifs.gov.au/cfca/publications/child-protection-and-aboriginal-and-torres-strait-islander-children.

[21] Available from www.humanrights.gov.au/publications/bringing-them-home-appendix-9-recommendations.

opportunity offered by the overhaul of the closing the gap strategy and welcomes the national consultation by the Government seeking feedback on the new approach, which aims to integrate more culturally sensitive and community-centred elements, such as home ownership, community safety and overcoming trauma. She calls for that initiative to include a more gendered approach and more gendered targets overall, as well as specific targets to reduce women's detention rates, child removal incidents and violence against women.

48. Additionally, the Special Rapporteur was informed of difficulties in accessing community-based infrastructure, such as housing and schooling, particularly in remote areas. She is concerned over reports that the cashless "Basics cards" present an obstacle to escaping situations of family violence.

49. The Special Rapporteur acknowledges that of the $A 100 million allocated to the third action plan of the National Action Plan to reduce violence against women and their children, which relates to the period 2016–2019, $A 25 million was devoted to specific measures to help indigenous women and communities, including funding of the Family Violence Prevention Legal Services. Despite commendable new initiatives, such as the testing of intensive family case management, treatment of perpetrators, the delivery of trauma-informed care, including for children witnessing violence, the Special Rapporteur notes the overall need for closer engagement with indigenous communities. She consistently heard that in the framework of the "Indigenous Advancement Strategy", tenders for services were awarded to non-indigenous organizations, adversely affecting indigenous organizations, which were forced to close or drastically downsize and reduce the basic services they had been providing to their communities in the areas of health, housing and legal services. She reaffirms the recommendation of the Special Rapporteur on the rights of indigenous peoples on transferring responsibility for local programme implementation to indigenous-led organizations, in order to build capacity and their ability to exercise self-determination (see A/HRC/36/46/Add.2, paras. 37–41 and para. 108 (d)).

50. The Special Rapporteur was encouraged by her visit to the Cherbourg community, one of three trial locations for a new integrated service developed and implemented as a response to the recommendations in the *Not Now, Not Ever* report.

2. Violence against women in detention and against indigenous and other women in prison

51. The Special Rapporteur visited the Brisbane Women's Correctional Centre and spoke with a number of women and girls who were either incarcerated, had experienced incarceration or had family members incarcerated. All their experiences had a striking common characteristic: that many of these women and girls had been victims of multiple and intersecting forms of violence, sexual assault, trauma and abuse. Some of them reported a lack of proper medical attention, and in some cases "overmedication".

52. The Special Rapporteur raises concerns about excessive incarceration, prison overcrowding, strip-searching, solitary confinement, lack of alternatives to custodial sentences, in particular for women with dependent children, inadequate access to health care (in particular mental health care) and inadequate re-entry programmes to prevent reoffending. Most of the women visited in the Centre were incarcerated for minor, non-violent offences, such as stealing, fraud and breaches of domestic violence orders.

53. Conditions of detention in the Centre were dire, with the number of inmates increased from an official capacity of 267 to 393 at the time of the visit. The prison staff indicated that 70 per cent of the women prisoners had had, or were having mental health issues. Indigenous women were clearly overrepresented, making up 33 per cent of the inmates while constituting 2 per cent of the total population in Queensland. In that respect, the Special Rapporteur notes a 2016 report by the Queensland Ombudsman that contained

recommendations aimed at ensuring that the level of overcrowding at the Brisbane Centre was reduced, prisoners' living conditions improved and access to services increased.[22]

54. Imprisoned women have commonly experienced domestic violence and sexual assault, but they rarely have access to programmes or support to assist them to deal with trauma. The continued practice of strip-searching women within prisons exacerbates this trauma. As imprisonment rates have increased markedly throughout Australia since 2000, and most markedly among indigenous women, the conditions in women's prisons and access to programmes, services and health care have deteriorated and contribute to a continuum of violence within the detention system, which renders women more violent outside.

55. The Special Rapporteur notes with concern that the increasing number of reciprocal domestic violence orders issued is one of the consequences of the de-gendered application of domestic violence legislation in general. Indeed, some of the women she met in prison had been incarcerated as a result of a breach of a domestic violence orders that had been delivered to both partners. While noting a range of penalties and sentencing in cases of breaches of such orders across state and territory jurisdictions, she warns that such de-gendered application of domestic violence legislation punishes Aboriginal women in particular. The Office for Women in Queensland acknowledged the issue of the adverse impact of the legislation on women breaching such orders, in particular in a context where of around 60,000 protection orders issued each year, 27,000 would be breached.[23]

56. The Special Rapporteur also expresses concern at the jailing of minor girls in adult facilities, which contravenes the Convention on the Rights of the Child and recommendations issued by the Committee on the Rights of the Child on the administration of juvenile justice (see CRC/C/15/Add.268, para. 74 (g)). She met with a 17-year-old held in the Centre who had been placed in solitary confinement because of the risk of self-harm. The Special Rapporteur recognizes that Australia has lodged a reservation to article 37 of the Convention and calls for the withdrawal of that reservation. The entry into force of the Queensland Youth Justice and Other Legislation (inclusion of 17-year-old persons) Amendment Act 2016 in February 2018 ensures that all Australian jurisdictions now treat children under the age of 18 as juveniles. The amendment entered into force in February 2018 and will be implemented over an appropriate period of time to ensure a safe and sustainable transition.

57. The Special Rapporteur also wishes to draw attention to the report of the Royal Commission and Board of Inquiry into the protection and detention of children in the Northern Territory tabled in Parliament on 17 November 2017.[24] While the report only applies to the Northern Territory, it is telling about the failure of a "tough on law and order" approach across Australia. It also sets out findings and recommendations on girls in detention.

58. The Special Rapporteur is troubled that women and girls on remand or pretrial detention are held together with convicted women, which raises serious concerns under article 10 (2) of the International Covenant on Civil and Political Rights. In that regard, she welcomes the ratification by Australia of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and calls for the withdrawal of its reservation under article 10 (2) of the Covenant.

59. The Special Rapporteur was also apprised of the lack of adequate and sufficient rehabilitation services and empowerment programmes for women leaving detention and reintegrating into their communities, which often leads to reoffending.

[22] Queensland Ombudsman, "Overcrowding at Brisbane Women's Correctional Centre" (September 2016).

[23] Figures given during a meeting with the judiciary in Brisbane.

[24] Available from https://childdetentionnt.royalcommission.gov.au/Pages/Report.aspx.

60. Indigenous women and girls are the fastest-growing prison population group.[25] Overall, they make up around 34 per cent of the female prison population but only 2 per cent of the adult female population.[26] Research demonstrates that a majority of women in prison have experienced domestic violence and while being a victim of domestic violence is not a direct cause of indigenous women being incarcerated, it is a precursor to a range of conditions that increase vulnerability to criminalization and imprisonment. Additionally, some indigenous women, in the absence of appropriate responses within their community to their therapeutic needs (mental health disorders, disabilities), end up using the criminal justice system as a mean of therapy, thus further compounding their trauma. Criminalized women and girls have exceptionally high levels of mental and cognitive disability compared with the general population. They will have experienced very high rates of sexual and physical violence, most from their childhood or youth, and imprisonment and youth detention exacerbate their trauma.

61. Women with disabilities represent more than 50 per cent of the female prison population. More than half of all women incarcerated have a diagnosed psychosocial disability and a history of sexual victimization. The rate of incarceration of indigenous women with disabilities is higher than the equivalent figures for men. Indigenous women with disabilities are at risk of being detained, often without conviction, in prisons and forensic psychiatric units throughout Australia, enduring periods of indefinite detention, in some cases for years. Women with psychosocial disabilities and intellectual or learning disabilities are disproportionately classified as high-security prisoners and are more likely to be in high-security facilities than other prisoners.[27]

62. Key drivers contributing to offence rates are too often overlooked: they include inadequate or inappropriate education, inadequate housing, health issues, including mental health, disability, access to employment, family violence and alcohol and other drug use.

63. The Special Rapporteur welcomes the recent establishment of an inquiry to be conducted by the Australian Law Reform Commission into the incarceration rate of indigenous peoples, and especially women.[28]

3. Violence against women and girls with disabilities

64. The Special Rapporteur received numerous reports on the high incidence of violence against, and sexual abuse of, women and girls with disabilities in institutional, residential and other care settings. Such violence is far more extensive than violence among the general population and is significantly more diverse in nature and more severe than for women in general.[29] Compared to their peers, women with disabilities experience significantly higher levels of all forms of violence more intensely and frequently and are subjected to such violence by a greater number of perpetrators. Their experiences of violence last over a longer period of time and more severe injuries result from that violence.[30] Beyond forms of violence such as sexual abuse, including rape and domestic violence, women and girls with disabilities are at particular risk of practices violating their sexual and reproductive rights, such as forced sterilization, forced abortion and forced

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[25] See, for example, www.hrlc.org.au/news/new-stats-reveal-that-aboriginal-and-torres-strait-islander-women-are-one-of-the-most-incarcerated-groups-in-the-world and http://natsiwa.org.au/wp-content/uploads/2014/02/NATSIWA-submission-Special-Rapporteur-on-Violence-Against-Women.pdf.

[26] See Human Rights Law Centre and Change the Record Coalition, "Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment" (May 2017), p. 4.

[27] See Women with Disabilities Australia, submission to the Committee on the Elimination of Discrimination against Women (September 2016), para. 12, available at wwda.org.au/wp-content/uploads/2016/09/WWDA_sub_CEDAW_September_2016_Final_WEB.pdf.

[28] See www.alrc.gov.au/inquiries/indigenous-incarceration/terms-reference.

[29] See Women with Disabilities Australia, fact sheet prepared for the fifty-third session of the Committee against Torture (November 2014), available at www.pwd.org.au/documents/temp/FS_Violence_WWD%27s.pdf.

[30] See Women with Disabilities Australia submission, para. 7.

contraception. On forced sterilization, the Special Rapporteur echoes concerns raised consistently by the United Nations human rights mechanisms, which have consistently recommended the adoption of legislation prohibiting sterilization in the absence of prior, fully informed and free consent, except where there is a serious threat to life or health (see, for example, CEDAW/C/AUL/CO/7, paras. 42 and 43; CAT/C/AUS/CO/4-5, para. 20 and CRPD/C/AUS/CO/1, para. 53).

65. Women and girls with disabilities also face additional obstacles in leaving situations of family violence, in particular in cases where they need additional equipment to leave such a situation. Due to their cognitive impairment, they have reduced skills for recognizing family violence. They often live in a circle of poverty, violence and homelessness. Service providers are also often slow to react to financial abuse by family members. There are serious gaps in service delivery and in access to complaints mechanisms. While welcoming the national disability insurance scheme, the Special Rapporteur calls for a gendered approach in its implementation.

66. The issue is not addressed adequately in legislation or policy frameworks on violence against women or women with disabilities, leading to an overall lack of accountability and impunity for perpetrators. There is no comprehensive and properly intersectional human rights policy framework to address all forms of violence against people with disabilities, especially women, and no legal, administrative or policy framework for the prevention, protection, investigation and prosecution of all forms of violence, exploitation, and abuse of people with disabilities.

67. Women and girls with disabilities face accrued difficulties in accessing remedies. The Special Rapporteur received details of cases where service providers had not reported some cases, or where the police had refused to investigate allegations of sexual violence because the alleged victims had a mental disability which they had decided would be problematic in terms of gathering evidence.

68. The Special Rapporteur echoes the concern that there is little data on the specific situation of women and girls with disabilities, in particular indigenous women and girls (see CRPD/C/AUS/CO/1, para. 53).

69. In 2015, the Senate initiated an inquiry into violence, abuse and neglect against people with disability in institutional and residential settings, including gender- and age-related dimensions and the particular situation of indigenous peoples with disabilities and culturally and linguistically diverse people with disabilities.[31] The report shed some light on the culture prevalent in some institutions and uncovered the systematic nature of the violence. The Special Rapporteur notes that a key recommendation made by the inquiry was that a Royal Commission be established to look into violence against and abuse and neglect of persons with disabilities, with terms of reference to be determined in consultation with persons with disabilities, their families and supporters, and disability organizations. She understands that the federal Government has so far refused to do so. Stakeholders working on these issues all reported a sense of resistance to tackling these issues on the part of the Government.

4. Violence against culturally and linguistically diverse women, including women asylum seekers and refugee and migrant women

70. The Rapporteur met with a number of organizations working with the country's culturally and linguistically diverse communities, and in particular those supporting women. Women from those communities commonly experience language barriers, cultural differences, a lack of understanding of the legal and migration systems, social and economic disadvantages and limited social and familial support. Marginalization, racism and xenophobia exacerbating domestic and family violence in such communities and the immigration status of women subjected to family violence have a significant impact on their experience of that violence and the ability to leave a violent relationship. Of particular

[31] Available from www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report.

concern is the ability of migrants and refugees who are experiencing violence to gain access to available services and assistance. The ASPIRE project of Australia's National Research Organisation for Women's Safety found that social isolation experienced by many migrant and refugee women could be exploited by perpetrators of family violence to prevent them from getting help. Conditions relating to temporary visas can have a serious impact on the safety of immigrant women experiencing family violence. Temporary visa holders face barriers to accessing services because of visa conditions that can restrict access to income support, public housing, health care and child services, while those services are essential in situations where migrant women fear for their safety.

71. The Special Rapporteur notes the family violence provisions of the Migration Regulations 1994, which allow a person who has been a victim of family violence committed by his or her partner, upon making a statutory declaration relating to family violence,[32] to continue with an application to remain permanently in Australia even though the relationship has ended. However, it needs to be recognized within immigration policy that family violence can be inflicted by any family member, not only the sponsors, and that consequently, the family violence exception should be expanded to persons on non-partner visas. Any victim of family violence, regardless of visa status, should be able to access the full range of social and health services. Since July 2017, asylum seekers who are not eligible for Medicare have been granted free access to health services in public hospitals in Queensland.

72. The Special Rapporteur also notes the migration amendment (family violence and other measures) bill 2016, aimed at addressing family, domestic and sexual violence in the migration law context. The family violence unit of the Department of Home Affairs assesses family violence claims made by visa applicants and provides referral advice to support services, including in circumstances where the person is not eligible for a visa under the family violence provisions. The Special Rapporteur cautions against the unintended consequences of the bill that could arise from the requirement for an assessment and approval process for sponsors of visa applicants other than for work visas, and the delays that will likely arise from requiring approval of the sponsor before applying for a visa. She also raises concerns about the information-sharing provisions which could perpetuate the vulnerability of visa holders in family violence situations.[33]

73. The Special Rapporteur acknowledges the long-standing refugee settlement programme, which includes a focus on women at risk. However, as has been raised repeatedly by United Nations human rights bodies, the overall policies and laws relating to asylum seekers arriving by sea raise concerns under both international refugee and human rights law. She regrets that the Government does not extend the same level of response to refugee women who seek asylum onshore, many of whom remain today at ongoing risk of violence, including sexual violence, both in detention centres and while living on bridging visas in the community. Those policies and laws are punitive in nature and do not take into account the experience of women who have often fled situations of violence and experienced violence during their journey and during processing on Nauru. She is particularly concerned at the plight of refugees and asylum seekers detained offshore, either at the regional processing centre on Nauru or within the community, and the continuing serious reports of violence against women and children, including sexual violence.

74. During his official visit to Australia in November 2016, the Special Rapporteur on the human rights of migrants reported accounts of rape and sexual abuse of female asylum seekers and refugees by security guards, service providers, refugees and asylum seekers and by the local community, and that no proper and independent investigation mechanism was provided, which was making the life of women in the regional processing centres unbearable (see /HRC/35/25/Add. 3, paras. 55, 78 and 83).

[32] See www.homeaffairs.gov.au/Forms/Documents/1040.pdf.

[33] See Women's Legal Services NSW, submission regarding the migration amendment (family violence and other measures) bill 2016, available from www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/MigrationFamilyViolence/Submissions.

75. The Special Rapporteur notes that since the Government and Senate reported on the conditions at the regional processing centre on Nauru, some efforts have been made to improve the situation. However, she remains deeply concerned at the lack of adequate investigation of complaints of sexual violence and insufficient access to justice. She is also concerned at reports of asylum seekers and refugee women and girls, including some who have been raped, who have been transferred temporarily to Australia on medical grounds and who have ongoing health concerns, being held in onshore detention and facing return to the regional processing centre on Nauru.

5. Violence against older women

76. The Special Rapporteur also received information about abuse of and violence against older women committed by family members, but also by people representing or interacting with older people through delivery of services. She notes that a significant proportion of the abuses reported were in the area of financial abuse and the exercise of power of attorney. In terms of the number of women affected, she notes the lack of a prevalence study or data, which is in contrast to the existence of a considerable amount of anecdotal and case study data. She heard also of cases of informal family arrangements, where parents are promised that they will be looked after by their children in exchange for their houses and end up being abused by their children. Cases of such abuse in nursing homes were also reported. On 20 February 2018, the Attorney-General announced the development of a national plan on elder abuse. The Special Rapporteur looks forward to the conclusion of the inquiry into elder abuse by the Australian Law Reform Commission.

VI. Opportunities and challenges

A. Intersection of family violence, domestic violence and child protection legislation

77. The family law system and the courts are largely the creature of federal law, while the states and territories are responsible for child welfare and the prevention of violence against women and their protection. The complexities for women and children navigating the federal and state/territory courts and systems are well summed up in a report by the Council of Australian Governments: "A woman's journey in the court system generally begins in the state family violence courts. This family violence state system gives the immediate response to the crisis. If a woman then decides to separate, or is separated from, her violent partner she may need the family law system, which offers longer-term resolution of separation and parenting issues. A woman may also find herself in the child protection system if her children are subject to protection orders. These are three different legal systems, and when they lack integration the safety of women and their children can be impeded."[34] The greatest potential for conflict probably arises when a parenting order under the Family Law Act and a state or territory domestic violence protection order are in force at the same time, with an inherent tension between facilitating children's meaningful contact with both parents and protecting children and their parents from family violence.

78. A range of measures have been taken by the Attorney-General's Department to improve the response of the family law system. They include the funding of family advocacy and support services in family courts to provide assistance to people moving between the state and federal systems; the development of a national domestic and family violence bench book for judicial officers dealing with cases involving family violence;[35] and the funding of training for judicial officers on the dynamics of family violence.

79. The Special Rapporteur welcomes the legislative amendments to the Family Law Act, which have expanded the definition of family violence to include economic violence.

[34] Department of the Prime Minister and Cabinet, *COAG Advisory Panel on Reducing Violence against Women and their Children, Final Report* (2016), p. 123.

[35] See http://dfvbenchbook.aija.org.au/.

She also welcomes proposed amendments to the state and territory courts, in particular children's courts, to expand their jurisdiction, which should ultimately remove the responsibility that has been placed on women for the safety of their children in domestic violence settings.

B. Legal/front-line services defunding

80. The Special Rapporteur met with a number of service providers, including the National Family Violence Prevention Legal Services, which provide culturally appropriate legal advice and support services to indigenous peoples who have experienced family violence or sexual assault. She was informed of the challenges they face, such as language barriers, the lack of legal literacy and difficulties in accessing remote communities. She is concerned that some funding cuts are the result of a competitive tendering system put in place by the "Indigenous Advancement Strategy" and that funding that used to be allocated for Aboriginal organizations is being "mainstreamed" (see A/HRC/36/46/Add.2, paras. 37–41).

81. At the time of the visit, providers of legal/front-line services were concerned by the funding insecurity and loss of political support for specialist women's services, including specialist legal services. At the same time, and thanks to the efforts deployed by all stakeholders to raise community awareness and condemnation of domestic, family and sexual violence, demand for support services, including in relation to protection orders, family law, child protection and criminal matters, is likely to continue to increase. People fleeing domestic and family violence also regularly seek legal services for housing, credit and debt challenges and access to social security.

82. The current funding of some legal community services, including the family violence legal services, has been recognized by the Productivity Commission as insufficient to ensure that women fleeing domestic/family violence get the support they need. Many organizations reported on the short-term nature of project contracts which limited the possibility for longer-term planning and the sustainability of their services. They also reported that they were no longer receiving funding for advocacy, legal education and prevention work (see A/HRC/36/46/Add.2, para. 41, and A/HRC/37/51).

1. Safe housing and service delivery

83. Domestic violence is one of the leading causes of women's homelessness, in particular in a context where the victim is removed from the home, rather than the perpetrator. The Special Rapporteur was informed by the Department of Social Services that 39 per cent of those accessing homelessness services were women with children escaping violence. It is essential that women escaping violence can access front-line crisis services and affordable and safe housing, and that the barriers to this are removed. Service providers and other interlocutors with whom the Special Rapporteur met pointed to a severe shortage of refuges for women and children escaping violence and of public housing in general. She is concerned at the situation of women, in particular those living in remote areas and indigenous communities, who are confronted with the dilemma of being homeless, possibly with children, with no safe refuge, or staying with their abusers. In Alice Springs she visited the only shelter available for the whole region, from which women had been turned away for lack of space. As a result of persistent accommodation shortages, women escaping violence are sometimes placed temporarily in motels. In the Northern Territory, she was informed that on average a woman needs to wait 5 years to receive accommodation, while in the town of Tennant Creek that figure is 10 years.

84. The Special Rapporteur notes that crisis accommodation services (women's refuges) are funded through the national affordable housing agreement. However, she notes a lack of long-term funding arrangements for women's refuges under the agreement, causing difficulties in service delivery.

85. The Special Rapporteur was encouraged by the knowledge that there is a working group on Aboriginal family violence, which is part of the national plan to reduce violence against women and their children, that focuses on remote central Australia and involves the

Governments of Western Australia, South Australia and the Northern Territory, the federal Government and aboriginal women leaders, to address the issues of remoteness and cross-jurisdictional challenges, with the goal of linking women's safety services across the three state and territory jurisdictions.

86. She also welcomes initiatives with the private sector, such as the one undertaken by the federal Government with telecommunications company Telstra to provide free mobile phones to women entering shelters and to assist them in safely using them.

2. Protection orders and help lines

87. The Special Rapporteur welcomes the introduction of a national domestic violence order scheme to allow orders issued in one jurisdiction to be automatically recognized and enforceable across all jurisdictions. The scheme has two aspects: model laws that enable the automatic national recognition of domestic violence orders and a system to support information-sharing and enforcement across jurisdictions. The Council of Australian Governments agreed to the Commonwealth leading work to develop a comprehensive, national information-sharing system that police and courts will be able to use for enforcing domestic violence orders, to be called the national order reference system. The Council further agreed to support the national domestic violence order scheme in the short term through an interim information-sharing solution. That will provide the police and courts with information on all domestic violence orders that have been issued, but will not have the same enforcement capacity as the permanent reference system.

VII. Conclusions and recommendations

88. **The Special Rapporteur commends the political will to address violence against women as a national priority, evident in the National Action Plan to reduce violence against women and their children for the period 2010–2022, which has a strong focus on prevention. However, that will is limited by several factors: a lack of a federal law or harmonized national laws on the prevention and prosecution of violence against women, in line with the Convention on the Elimination of All Forms of Discrimination against Women; the inconsistency in definitions of violence against women and hence in the protection of women across jurisdictions; the lack of comparable data for evidence-based policy and the absence of a femicide watch or femicide review panels; and proper analysis of the causes of femicides and gaps within services and systems.**

89. **Based on the above findings and in a spirit of cooperation and dialogue, the Special Rapporteur offers the following recommendations.**

90. **On law and policy reform, the Government should:**

(a) **Withdraw its reservation to article 11 (2) of the Convention on the Elimination of All Forms of Discrimination against Women and its general reservation to the Convention relating to the exclusion of women from combat duties as soon as possible;**

(b) **Fully incorporate and implement the Convention through appropriate legal actions such as the adoption of a national human rights act or ensuring its full incorporation and implementation at the federal, state and territory levels;**

(c) **Amend the Constitution or other laws to enshrine the right to equality of women and men, as required by article 2 of the Convention, and the prohibition of discrimination against women, in accordance with the definition in article 1 of the Convention, in order to provide a standard for harmonizing laws related to women's rights and the prevention of gender-based violence against women;**

(d) **Enact a federal law on combating and preventing violence against women and domestic violence based on the Convention and general recommendations of the Committee on the Elimination of Discrimination against Women No. 19 (1992) on violence against women and No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19.**

91. **On violence against women in general, the Government should:**

(a) **Further improve the collection of comparable data on gender-related killings of women or femicides by setting up at the federal level a system charged with collecting data from all jurisdictions;**

(b) **Consider expanding the mandate of homicide panels to homicide/femicide panels or establishing or designating other bodies to perform such a role, for example independent institutions such as the Australian Human Rights Commission, with the participation of NGO representatives, as recommended in in the Special Rapporteur's thematic report on the topic (A/71/398), and ensure that the funding made available for data collection purposes under the third national action plan to reduce violence against women and their children for the period 2016–2019 is made sustainable;**

(c) **Expand the definitions of family and domestic violence to cover all forms of gender-based violence against women, including sexual assault, sexual harassment, violence in residential settings and online violence and harassment;**

(d) **Change the police services delivery model, which is still very much oriented to law enforcement, towards more intervention and prevention and continue working on changing the underlying attitudes and behaviour of the police, in line with the recommendations in the report on sexual harassment within the Victoria Police;**[36]

(e) **Provide sustainable and separate funding for women's shelters and housing and consider adopting a national plan on housing for victims of gender-based violence against women.**

92. **On domestic and family violence in indigenous settings, the Government should:**

(a) **Elaborate a specific national action plan on violence against indigenous women and girls through the adoption of appropriate temporary special measures under article 4.1 of the Convention on the Elimination of All Forms of Discrimination against Women. That would accelerate their advancement in line with the commitments made under articles 22 and 23 of the United Nations Declaration on the Rights of Indigenous Peoples, whereby it is made clear that Aboriginal and Torres Strait Islander women should have ownership of and administer initiatives to improve their law and justice outcomes. A prevention framework similar to the one adopted by Our Watch should be considered;**

(b) **Adopt a holistic approach to consultation (as mandated by the Declaration on the Rights of Indigenous Peoples) with Aboriginal-led solutions that amplify the voices of Aboriginal women with appropriate support and resources, in particular ensuring the provision of a sufficient number of shelters, especially needed by Aboriginal communities, that would be run by them and used as a hub for other services needed for recovery and empowerment. Also provide more social workers for Aboriginal women, especially in remote areas where victims have difficulty in accessing services;**

(c) **Improve universal access to community-based infrastructures, including school buses. The budget for indigenous affairs and policies based on human rights implementation should be restored and increased, and money redirected to address the underlying causes of crime. Temporary special measures should be introduced for the employment of Aboriginal and Torres Strait Islanders in the public services of the states and territories at all levels, especially in the police forces policing Aboriginal communities and in prisons;**

(d) **Revise laws and policies that jointly with social and economic disadvantages contribute to the significant overrepresentation of indigenous peoples**

[36] See Victorian Equal Opportunity and Equal Rights Commission, *Independent Review into Sex Discrimination and Sexual Harassment, Including Predatory Behaviour in Victoria Police* (2015).

in prison. The link between poverty, restrictive welfare payment schemes and their impact on the ability of Aboriginal women and children to live safe from family violence needs to be addressed. A review of the policy of incarceration for unpaid fines, which has a disproportionate effect on the rates of incarceration of Aboriginal women, is also necessary;

(e) Set targets through the framework of "Close the Gap" and implement an approach investing in holistic early intervention, prevention and diversion strategies that will increase safety, address the root causes of violence against women, cut reoffending and imprisonment rates, and build stronger and safer communities.

93. **On violence against women with disabilities, the Government should:**

(a) Fully implement the recommendations of the Senate Community Affairs References Committee in its report on violence against and abuse and neglect of people with disabilities in institutional and residential settings (2015), including the recommendation to create a Royal Commission to inquire into violence against and abuse of people with disabilities;

(b) Implement the recommendation made by the Committee on the Rights of Persons with Disabilities that the Government commission and fund a comprehensive assessment of the situation of girls and women with disabilities, in order to establish a baseline of disaggregated data against which future progress towards the implementation of the Convention could be measured (see CRPD/C/AUS/CO/1, para. 54).

94. **On women and girls who are incarcerated, including indigenous women, the Government should:**

(a) Adopt a gendered approach to the incarceration of women and girls, providing reoffending prevention programmes tailored to the needs of indigenous peoples, which should also be made available to people on remand;

(b) Ensure that girls are held separately from adult women;

(c) Implement the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), which provide guidance for the specific characteristics and needs of women in prison, in particular rule 26, which recognizes the significant impact that loss of contact with children has on mothers (and on the best interests of the child);

(d) Increase the funding for correctional services, address the underlying causes of incarceration, consider legislation to divert women from custodial services, include specific indigenous representatives on parole boards and ensure gender balance in their membership;

(e) Offer more education and vocational training and services, including mental health services, to help break the cycle of violence, and set up a panel in each prison to prevent any excessive prescription of medicines;

(f) Under the recently established inquiry by the Australian Law Reform Commission into the incarceration rate of Aboriginal and Torres Strait Islander peoples, and especially women, address the overrepresentation of Aboriginal women in prison and examine the laws, such as the ones regulating unpaid fines and driving offences, and the frameworks and institutions and broader contextual factors that lead to the disturbing overrepresentation of Aboriginal and Torres Strait Islander peoples in the Australian prison system;

(g) Encourage continuing exploration of alternatives to incarceration, such as the community-led justice model, and focus on justice reinvestment, diverting a proportion of public funding to local communities that have a high rate of offending.

95. **On culturally and linguistically diverse women, including women asylum seekers and refugee women, the Government should:**

(a) **Broaden the definition of family violence in the Migration Regulations 1994, to ensure that decisions for victims of domestic and family violence making a statutory declaration on family violence are made in a timely fashion and provide crisis payments to those victims regardless of their visa status while a decision is pending;**

(b) **Adopt the recommendations of the Australian Law Reform Commission in its 2011 report, *Family Violence and Commonwealth Laws – Improving Legal Frameworks*;**

(c) **Protect all women and girl refugees, offshore and onshore, in line with the Convention on the Elimination of All Forms of Discrimination against Women and general recommendation No. 32 of the Committee on the Elimination of Discrimination against Women, cease the detention of women and children and provide women asylum seekers with access to safe shelter and to sustainable livelihoods.**

96. **With regard to older women, the Government should develop a national plan to promote the autonomy and agency of older people by addressing ageism and promoting community understanding of elder abuse, achieving national consistency in standards, safeguarding at-risk adults and improving responses and building the evidence base for responding to elder abuse. In achieving the above goals, it is recommended that the national plan take into account the different experiences and needs of older persons with respect to their gender, sexual orientation, disability and cultural and linguistic diversity.**

97. **The Government should recognize the key work carried out by both specialist women's services and women's legal services, including Aboriginal ones, not only in responding to violence against women but also in preventing it.**

98. **The necessary funding should be provided to match the current needs of women for advice and assistance. Particular attention should be given to increasing funding for culturally appropriate legal services, which have experienced a drop in funding. Funding for advocacy work should be reinstated.**

99. **Communication with civil society organizations should be improved and greater consultation, participation and collaboration should be sought in the development, implementation, monitoring and evaluation of the implementation of prevention policies.**

100. **The Government should ensure that development assistance programmes take into account the recommendations of independent human rights mechanisms and in particular recommendations by the Committee on the Elimination of Discrimination against Women, the Working Group on discrimination against women in law and in practice and the Special Rapporteur on violence against women, its causes and consequences.**